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in the

Supreme Court

of the

United States

OCTOBER TERM, 1979

NO. 79-995

AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, (AFL-CIO)
Petitioner,

vs.

THE HONORABLE JOHN GALE, AS CIRCUIT COURT JUDGE OF THE ELEVENTH JUDICIAL CIRCUIT IN AND FOR DADE COUNTY, FLORIDA,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE DISTRICT COURT OF APPEAL OF FLORIDA, THIRD DISTRICT.

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OCTOBER TERM, 1979

NO.

AMERICAN FEDERATION OF
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Petitioner,

vs.

THE HONORABLE JOHN GALE, AS CIRCUIT COURT JUDGE OF THE ELEVENTH JUDICIAL CIRCUIT IN AND FOR DADE COUNTY, FLORIDA,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE DISTRICT COURT OF APPEAL OF FLORIDA THIRD DISTRICT

To the Honorable, the Chief Justice and Associate Justices of the Supreme Court of the United States:

American Federation of Government Employees, the petitioner herein, prays that a writ of certiorari issue to review the order of the District Court of Appeal of Florida, Third District, entered in the above entitled case on January 23, 1979.

ORDER BELOW

The order of the District Court of Appeal of Florida, Third District, is unreported and is printed in Appendix, hereto, page App. 1.

JURISDICTION

The order of the District Court of Appeal of Florida, Third District, was entered on January 23, 1979. A timely petition for rehearing was denied on February 12, 1979 (C.R., page 37). Petitioner filed a timely notice to invoke the certiorari jurisdiction of the Supreme Court of Florida on March 1, 1979 (C.R., page 38). The Supreme Court of Florida denied certiorari and declined to take jurisdiction in its order entered on September 26, 1979 (C.R., page 39). The jurisdiction of this Court is invoked under 28 USC, Sec. 1257(3).

The effect of the order of the District Court of Appeal of Florida, Third District, in denying a writ of prohibition to defendant American Federation of Government Employees and the subsequent refusal of the Supreme Court of Florida to take jurisdiction to review said order, is to permit the state trial court to erroneously assert jurisdiction over the subject matter in this cause.

The U.S. Supreme Court has held that the denial of a writ of prohibition to prevent a lower court from taking jurisdiction of a controversy is final so as to subject the order to review by the U.S. Supreme Court although the original controversy is not determined. *Michigan Cent. R. Co. v. Mix, et al.*, 278 U.S. 492, 49 S.Ct. 207, 73 L.Ed 470 (1929). In the Michigan Cent. case this Court held it had jurisdiction even though there was no opinion written by the highest court of the state in denying the application for writ of prohibition.

The federal question raised by defendant American Federation of Government Employees in the Florida court, and here, is whether the Florida courts have power to proceed with and determine the controversy or whether the subject matter is preempted by Executive Order 11491. See *Local No. 438 Construction & General Laborers' Union, AFL-CIO v. Curry, et al.* 371 U.S. 542, 83 S.Ct. 531, 535, 9 L.Ed.2d 514 (1963).

QUESTIONS PRESENTED

1. Can a member of a Federal Public Sector Labor Union sue the National Union in state court in a common law negligence action for the alleged failure of a national union representative to represent the union member in an adverse action proceeding regarding the union member's termination from employment with a federal employer.

2. The second and primary question presented to this Court is whether or not the Florida Supreme Court finally and erroneously asserted its jurisdiction to deal with a controversy which is beyond its power, and instead, is within the exclusive domain of the Assistant Secretary of Labor pursuant to Executive Order 11491.

3. The third question presented to this Court is whether the Florida court asserted its jurisdiction to deal with a controversy erroneously characterized as a common law tort action when in fact the proper characterization of the action is breach of duty of fair representation, calling for application of principles developed pursuant to federal labor law and Executive Order 11491, Sec. 10(e).

4. The fourth question presented to this Court is whether the Florida court erroneously asserted its jurisdiction to deal with the controversy in this cause, without first requiring plaintiff DeGrio to exhaust administrative remedies.

STATUTES AND EXECUTIVE ORDERS INVOLVED

This case involves Executive Order 11491 as amended by Executive Order 11616, 11636 and 11838, which was issued on October 29, 1969, pursuant to 5 USC 3301 and 7301. E.O. 11491 replaced E.O. 10988, which was issued by President John F. Kennedy on January 17, 1962. The sections this petition will be dealing with are set forth below (a copy of the Executive Order is included in the certified record page 43-49).

> Sec. 10(e) When a labor organization has been accorded exclusive recognition, it is the exclusive representative of employees in the unit and is entitled to act for and to negotiate agreements covering all employees in the unit. It is responsible for representing the interests of all employees in the unit without discrimination and without regard to labor

> organization membership. The labor organization shall be given the opportunity to be represented at formal discussions between management and employees or employee representatives concerning grievances, personnel policies and practices, or other matters affecting general working conditions of employees in the unit.
>
> Sec. 19(b) A labor organization shall not—
>
> (1) interfere with, restrain, or coerce an employee in the exercise of his rights assured by this Order;

STATEMENT OF THE CASE

The petitioner, American Federation of Government Employees, is one of the defendants in the state trial court. Defendant William Mudgett, a National Union Representative, was dismissed from the cause, with prejudice, by order entered November 22, 1978. The respondent is the circuit court judge presiding over the state trial court proceedings. The plaintiff in the state court proceedings is Joella DeGrio. Petitioner is represented by Attorney Harold D. Smith. The law firm of Nachwalter, Christie & Falk, P.A. represented the plaintiff below and respondent Judge Gale in the state appellate proceedings with reference to Defendant AFGE's petition for writ of prohibition. For simplicity the parties will be referred to as follows:

> Petitioner American Federation of Government Employees will be referred to as defendant AFGE.

William Mudgett, defendant below, will be referred to as defendant Mudgett.

Respondent, the Honorable John Gale, trial court judge, will be referred to as Judge Gale.

Joella DeGrio, plaintiff below, will be referred to as plaintiff DeGrio.

The following symbols will be used:

Tr Transcript
A. Appendix
C.R. Certified Record

This action was brought by plaintiff DeGrio on April 28, 1978, in the Eleventh Judicial Circuit in and for Dade County, Florida. An amended complaint was filed on September 19, 1978. Plaintiff DeGrio's amended complaint alleges, among other things, that defendant Mudgett, while acting within the course and scope of his duties as a national union representative of defendant AFGE, was negligent in his failure to attend and represent plaintiff DeGrio in an adverse action proceeding concerning plaintiff DeGrio's termination from her job with a federal employer. (See amended complaint, C.R., page 1-4) Defendant AFGE filed its motion to dismiss the amended complaint on September 29, 1978, alleging, among other things, that the state court lacked jurisdiction over the subject matter. (C.R., page 5-9) Defendant AFGE argued that if any duty at all was owed to plaintiff DeGrio, by defendant AFGE, it had to be a duty of fair representation. The duty of fair representation owed to its members, by unions created by executive order, is set

forth in Sec. 10(e) of E.O. 11491. (C.R., page 46) Defendant AFGE contended in the state court proceedings that Plaintiff DeGrio's allegations amounted to a charge that Defendant AFGE breached its duty of fair representation under E.O. 11491, thus, the subject matter was federally preempted and the state court must defer to the administrative procedure established pursuant to said executive order.

During a hearing on defendant AFGE's second motion to dismiss, Judge Gale characterized plaintiff DeGrio's action as being "a common law negligence action" and denied defendant AFGE's motion to dismiss. (Tr. p. 19 & 20, See excerpt included in C.R., page 17-18)

Defendant AFGE filed a petition for writ of prohibition in the District Court of Appeal of Florida, Third District, on November 27, 1978, seeking an order prohibiting the trial court from exercising jurisdiction over the subject matter in this cause. (C.R., page 19-30) Pursuant to said petition The District Court of Appeal issued a rule nisi on November 30, 1978, to show cause why a writ of prohibition should not be granted. (C.R., page 31-32) However, after hearing oral argument, the District Court issued its order on January 23, 1979 discharging the rule nisi and dismissing defendant AFGE's suggestion for writ of prohibition. (C.R., page 33 & App.) On February 12, 1979, the District Court denied defendant AFGE's petition for rehearing. (C.R., page 37) On March 1, 1979, defendant AFGE filed a timely petition with the Supreme Court of Florida to review the order of the District Court of Appeal dismissing the petition for writ of prohibition. (C.R., page 38) On September 26, 1979, the Supreme Court of Florida issued its order denying certiorari and declining

to take jurisdiction of the cause. (C.R., page 39) The effect of said order was to leave the state trial court with jurisdiction over the subject matter.

REASONS FOR GRANTING THE WRIT

This case involves the basic question of whether a union member can avoid application of the federal preemption doctrine and the exhaustion of administrative remedies doctrine by simply characterizing an action against the union as "common law negligence". Accordingly, important questions directly affecting federal labor law are presented.

To allow this cause to proceed in the state court under the label "common law negligence" would be to set a precedent in the labor law field not heretofore recognized. The court would be opening the door for every disgruntled union member to label his complaint as "common law negligence" and, thus, get directly into state court without exhausting administrative remedies and without being required to establish other elements necessary in an action for breach of duty of fair representation.

This Court said in *Local 100 of the United Association of Journeymen and Apprentices v. Borden*, 373 U.S. 690, 83 S.Ct. 1423, 10 L.Ed. 2d 638 (1963):

> It is not the label affixed to the cause of action under state law that controls the determination of the relationship between state and federal jurisdiction. Rather as stated in Garmon, supra, 359 U.S., at 246, 79 S.Ct. at 780, "(o)ur concern is with delimiting *areas of conduct* which must be free from state regulation if

> national policy is to be left unhampered" (Emphasis added). In the present case the conduct on which the suit is centered, whether described in terms of tort or contract, is conduct whose lawfulness could initially be judged only by the federal agency vested with exclusive primary jurisdiction to apply federal standards.

As noted earlier, any duty on defendant AFGE to represent plaintiff DeGrio in an adverse action, necessarily had to flow from Executive Order 11491. Sec. 10(e) of said order sets forth the union's duty of fair representation. Any allegations that the duty under Sec. 10(e) has been breached is an allegation that the Executive Order has been breached. This is an issue to be resolved by the Assistant Secretary of Labor. The Assistant Secretary of Labor and The Federal Labor Relations Council were created as the administrative experts for handling allegations that the Executive Order has been breached. An administrative procedure for considering such allegations was developed by the Assistant Secretary of Labor and set forth in 29 CFR 203, et.seq. Allegations that a union has breached its duty of fair representation have been processed through said administrative procedure on the question of whether the union's conduct constitutes an unfair labor practice in violation of Sec. 19(b)(1) of The Executive Order. The Assistant Secretary of Labor has considered and decided a number of cases involving issues of whether a union has breached its duty of fair representation. See the following decisions which are published, by the U.S. Department of Labor—Management Services Administration, in a bound publication entitled, "Decisions and Reports on Rules of

the Assistant Secretary of Labor for Labor-Management Relations Pursuant to Executive Order 11491 as Amended":

Anthan v. Professional Air Traffic Controllers Organization, MEBA, AFL-CIO (PATCO), A/SLMR 878 (1977).

Frealy v. American Federation of Government Employees, A/SLMR No. 838 (1977).

Quilico v. National Association of Government Employees, Local R7-51 (NAGE), A/SLMR No. 896 (1977).

Reynolds v. American Federation of Government Employees, Local 1858, Assistant Secretary Case No. 40-6700(CO), appealed to Federal Labor Relations Council and Reported at 4FLRC 466-469.

Wiest v. Professional Air Traffic Controller Organization, A/SLMR No. 918 (1977).

Willis and Wright v. National Association of Government Employees, Local R14-32 (NAGE), A/SLMR No. 469 (1974).

It should be noted that in considering issues involving breach of duty of fair representation, the administrative law judges have gone to great lengths to fashion their recommended decisions and orders after U.S. Supreme Court cases involving issues of breach of duty of fair representation. In the *Frealy v. AFGE* case (C.R., page 63), the administrative law judge said that under The Executive Order unions have a duty of

fair representation similar to that in the private sector. The administrative law judge relied upon private sector court decisions in evaluating the alleged breach of duty of fair representation. The same is true in the *Wiest v. PATCO* case. In the PATCO case the administrative law judge indicates that Sec. 10(e) of The Executive Order represents one of an employee's rights under The Order, and that Sec. 19(b)(1) of The Order mandates that a labor organization shall not interfere with, restrain or coerce an employee in the exercise of *his rights assured by The Order.* (Emphasis added). It is obvious from the administrative law judge's interpretation of The Order that a breach of a union's duty under Sec. 10(e), constitutes a breach of Sec. 19(b)(1), of The Executive Order, and the proper forum for resolving such an issue would be before The Assistant Secretary of Labor. This principle is further supported by *Willis and Wright v. National Association of Government Employees, Local R14-32 (NAGE),* A/SLMR No. 469 (1974).

The argument may be advanced by respondent that if this cause is characterized as involving defendant AFGE's duty of fair representation to plaintiff DeGrio, the state court would have jurisdiction to determine the controversy. This argument, if advanced, is not valid in this instance. Even though some state courts have taken jurisdiction in duty of fair representation-type controversies in private sector labor relations, this writer has not located any cases where a state court has taken jurisdiction in duty of fair representation-type controversies involving public sector unions. Assuming arguendo that the State of Florida could take jurisdiction over duty of fair representation controversies involving public sector labor unions,

plaintiff would still be required to exhaust administrative remedies or allege ultimate facts to show that it would be futile to attempt to exhaust administrative remedies. As can be seen from the complaint, plaintiff DeGrio never alleged that she exhausted or attempted to exhaust her administrative remedies pursuant to Executive Order 11491 or pursuant to the terms of the union's National Constitution (pertinent parts included in C.R., page 40-42, see Articles XIII and XIV).

The doctrine of exhaustion of administrative remedies and the preemption doctrine have been recognized and applied in the state of Florida. *Pushkin v. Lombard,* 279 So.2d 79 (Fla.3d DCA 1973). *Local Union #2135, International Association of Firefighters v. City of Ocala,* 371 So.2d 583 (Fla. 1st DCA 1979). *Maxwell v. School Board of Broward County,* 330 So.2d 177 (Fla. 4th DCA 1976) (copy included in C.R., page 50-54).

In the Maxwell case, a case involving a State Public Sector Union, the court held that jurisdiction over labor activities is preempted in favor of the Public Employee Relations Commission if the activities are arguably covered by provisions of the Florida Statutes Chapter establishing guidelines governing collective bargaining by public employees. Section 447.307 of The Florida Statutes establishes the duty of fair representation for state public sector labor unions, the same as Sec. 10(e) of E.O. 11491 establishes the duty of fair representation for federal public sector labor unions.

The Florida Public Employee Relations Commission has ruled that an allegation that a union has breached its duty of fair representation is an allegation that the union has committed an unfair labor

practice under Chapter 447 of the Florida Statutes. *J. M. Gow, Jr. v. American Federation of State, County and Municipal Employees, Local 1363,* 4 FPER 4168 (1978) (copy included in C.R., page 65-66), and *Robert Rockwell Turner v. Laborers' International Union of North America, Local #666, et al.,* 4 FPER 4180 (1978). In the Gow case PERC referred to private sector court cases in its consideration of whether there had been a breach of duty of fair representation on the part of the public sector union. In Gow, PERC stated:

> As in the private sector under the NLRA, any default in performance of the Section 447.307 duty constitutes infringement of Section 447.301 rights and is therefore enforceable as an unfair labor practice under the provisions of Sections 447.501 and .503.

In accordance with the Maxwell reasoning, any state public sector cases involving issues of duty of fair representation would be preempted in favor of The Public Employee Relations Commission in the state of Florida.

There is a striking similarity between the Florida Statute governing state public sector labor relations and E.O. 11491 governing federal public sector labor relations, both being created with the purpose and objective to provide an exclusive method for resolving labor matters within the public sector. The function of the Public Employee Relations Commission in Florida and the Federal Labor Relations Council and Assistant Secretary of Labor in the federal sector are very similar in handling controversies involving pubic sector labor unions. The failure of the state of Florida to apply the preemption doctrine to the controversy involving

plaintiff DeGrio in accordance with the principles the Florida Court sets forth in the Maxwell case is just the kind of inconsistency in labor law that this court intended to preclude with the preemption doctrine set forth in *San Diego Building Trades Council v. Garmon,* 359 U. S. 236, 79 S.Ct. 773, 3 L.Ed.2d 775 (1959). Any allegations that there has been a breach of the union's duty set forth in Sec. 10(e) of E.O. 11491 would involve activities that are arguably covered by The Executive Order and, thus, would be preempted in favor of the Assistant Secretary of Labor-Management Relations.

The Florida Supreme Court in *Sheetmetal Workers' Int. Ass'n. Local Union No. 223 v. Florida Heat and Power, Inc.* 230 So.2d 154 (Fla. 1970) held:

> If case is arguably subject to jurisdiction of National Labor Relations Board, then state courts must divest themselves of jurisdiction in favor of the federal Board and when question of possible or arguable federal jurisdiction arises it is to be determined by the National Labor Relations Board.

At the very least the case sub judice raises a question of possible or arguable federal preemption by E.O. 11491. The state court must defer to the Assistant Secretary of Labor to make the initial determination whether the subject matter is covered by the administrative procedures established pursuant to The Executive Order.

Respondent may advance the argument that plaintiff DeGrio's situation should be an exception to the federal preemption doctrine. If respondent advances such an argument, it should be rejected on the basis the nature of plaintiff DeGrio's complaint does not fall into

the category of cases that this Court has excepted from the federal preemption doctrine. An action characterized as common law negligence has never been excepted from the federal preemption doctrine by this Court.

In the Garmon case, this Court stated that giving the NLRB primary jurisdiction over labor controversies would solve the problem of uniformity in labor decisions. Two exceptions to the preemption rule were set out in the decision. The first allowed states to regulate and intervene when the activity was merely a "peripheral concern" of the Act. The second exception involved conduct that touches interests so "deeply routed in local feeling and responsibility" that absent specific congressional direction it cannot be inferred that Congress intended to deprive the state of the power to act. In support of this exception the Court relied on cases that involved violent activity, such as mass picketing, threats and actions of physical violence. Because a state's interest in maintenance of domestic peace was not intended to be overridden by the NLRA, and because intervention by state authority may be the only way to safeguard people from coercion and from destruction of personal property, the Court held that the general preemption rule ought not to apply in such cases. Barker, *Constitutional Law—Labor Law—National Labor Relations Board—State Trespass Laws Not Preempted by the National Labor Relations Act,* 79 Wisconsin Law Review, p. 217.

In *Linn v. United Plant Guard Workers of America Local 114* 383 U.S. 53, 86 S.Ct. 657, 15 L.Ed.2d 582 (1966), the Court established an exception to the Garmon preemption doctrine in a defamation case

holding that when statements made during a union representation campaign were made with malice and caused injury to an individual, a libel action was not preempted by the NLRA. The Court found that the state had an overriding interest in protecting residents from malicious libel.

In 1977 this Court further expanded the local concern exception in *Farmer v. United Brotherhood of Carpenters and Joiners of America Local 25,* 430 U.S. 290, 97 S.Ct. 1056, 51 L.Ed.2d 338 (1977). In the Farmer Case the Court held that a state court had jurisdiction to adjudicate a tort action brought by a union member against the union to recover damages for intentional infliction of emotional distress. This exception was aimed at protecting persons from malicious intentional torts. None of these cases suggested that the Garmon "primary jurisdiction rule" be disturbed. As a matter of fact, this Court reaffirmed the Garmon preemption rule in the Farmer decision and in *Amalgamated Association of Street, Electric Railway and Motor Coach Employees of America v. Lockridge,* 403 U.S. 274, 91 S.Ct. 1909, 29 L.Ed.2d 473 (1971).

This Court established a further exception to the federal preemption doctrine in *Sears, Roebuck & Co. v. San Diego County District Council of Carpenters,* 436 U.S. 180, 98 S.Ct. 1745, 56 L.Ed.2d 209 (1978). The Sears case involved union picketing. In the Sears case a state court injunction against peaceful picketing was aimed solely at the location of the arguably protected or prohibited trespassery picketing. The Court focused on the fact that the issue the Board would have confronted, had Sears filed an unfair labor practice charge, was not the same issue confronting the state court. The court

said, "The Board would have focused on the objective of the picketing, thus, the reason for preemption of state regulation of arguably prohibited conduct, threat of interference with the Board's primary jurisdiction, was not present." The Court indicated the subject matter would have been preempted had the controversy presented to the state court been identical to that which could have been presented to the Labor Board. In plaintiff DeGrio's case the controversy would be identical and, thus, preempted under the Sears reasoning.

In his concurring opinion, in the Sears case, Justice Powell noted "the 'danger of violence' is inherent in many — though certainly not all — situations of sustained trespassory picketing." (See page 1765 and footnote page 1766.) There has been no indication in recent decisions that this Court intends to extend the Sears exception to the preemption doctrine beyond trespass cases. There certainly has been no indication the Court intends to extend the exception to actions characterized as common law negligence actions.

There are no compelling or "overriding" state interests involved in the activities described in plaintiff DeGrio's complaint. There are no circumstances alleged in the complaint to justify excepting the case from application of the federal preemption doctrine.

This writer did not locate any cases where a court has taken jurisdiction over breach of duty of fair representation controversies involving unions created pursuant to Presidential Executive Order. There are numerous reported decisions involving said unions where courts have declined to take subject matter

jurisdiction over a variety of controversies, on the basis it was never the intent of the President of the United States to create any role for the judiciary in the implementation of the labor relations policy for federal employees. *Stevens v. Carey, et al.,* 483 F.2d 188 (7th Cir. 1973); *Meisch v. U.S. Army,* 435 F.Supp 341 (D.C. Mo. 1977); *Local 1498, American Federation of Government Employees v. American Federation of Government Employees (AFL-CIO), et al.,* 522 F.2d 486, (3rd Cir. 1975).

Subject matter jurisdiction is basic to the state court's authority to go forward with this cause, it should be determined at the outset of the action.

The order this Court is requested to review is one that falls in that small class which finally determines claims of right separable from, and collateral to, rights asserted in the action, too important to be denied review and too independent of the cause itself to require that appellants' consideration be deferred until the whole case is adjudicated. *Local No. 438, Const. and General Laborers' Union, AFL-CIO v. Curry,* 371 U.S. 542, 83 S.Ct. 531, 9 L.Ed.2d 514 (1963); *Mercantile National Bank at Dallas v. Langdeau,* 371 U.S. 555, 83 S.Ct. 520, 9 L.Ed.2d 523 (1963). Determination of subject matter jurisdiction is a separate and independent matter, anterior to the merits and not enmeshed in the factual and legal issues comprising plaintiff's cause of action.

In the event this Court declines to take jurisdiction pursuant to 28 USC, Sec. 1257 (3), it is respectfully requested that this Petition for Certiorari be treated as a motion for leave to file a petition for writ of prohibition to be issued pursuant to 28 USC, Sec. 1651, to prevent

the state court from usurping jurisdiction with which it is not vested.

CONCLUSION

For the foregoing reasons, this Petition for Writ of Certiorari should be granted.

Respectfully submitted,

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Telephone: (305) 923-6500

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on December ——, 1979, pursuant to Supreme Court Rule 33, three copies of the foregoing petition for Writ of Certiorari were mailed to George M. Nachwalter, Esquire, Nachwalter, Christie & Falk, P.A., Attorneys for Plaintiff below, Joello DeGrio and Attorneys for Respondent, The Honorable John Gale. A copy was also mailed to The Honorable John Gale, Circuit Judge of The Eleventh Judicial Circuit in and for Dade County, Florida, Dade County Courthouse, Miami, Florida.

HAROLD D. SMITH
Counsel for Petitioner

Appendix

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA
THIRD DISTRICT

JANUARY TERM, A.D. 1979

TUESDAY, JANUARY 23, 1979

CASE NO. 78-2189
Circuit No. 78-6174

WILLIAM MUDGETT and THE AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES,
Petitioners,

vs.

THE HONORABLE JOHN GALE, as Circuit Court Judge for the Eleventh Judicial Circuit In and for Dade County, Florida
Respondent,

This matter having come on for hearing before the court after notice, on petitioners' suggestion for writ of prohibition and responses filed and the court having considered same, it is ordered that the rule nisi heretofore issued on November 30, 1978 is discharged and the suggestion for writ of prohibition is dismissed.

Respondents' motion to transfer is hereby denied.

A True Copy
ATTEST:

[Illegible]
Clerk District Court of
Appeal, Third District

cc: Jay M. Levy
Harold D. Smith
Richard P. Brinker
Hon. John Gale

/bc

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA
THIRD DISTRICT

JANUARY TERM, A.D. 1979

MONDAY, FEBRUARY 12, 1979

CASE NO. 78-2189

WILLIAM MUDGETT, et al.,
Petitioners,

vs.

THE HONORABLE JOHN GALE, etc.,
Respondent.

Counsel for petitioners having filed in this cause petition for rehearing, and same having been considered by the court which determined the cause, it is ordered that said petition be and it is hereby denied.

A True Copy
ATTEST:

/s/ [Illegible]
Clerk District Court of
Appeal, Third District

cc: Nyce & Smith
Jay M. Levy

/plc

SUPREME COURT OF FLORIDA
WEDNESDAY, SEPTEMBER 26, 1979

CASE NO. 56,292
District Court of Appeal, Third District
78-2189

WILLIAM MUDGETT, et al.,
Petitioners,

v.

JUDGE JOHN GALE, etc.,
Respondent.

This cause having heretofore been submitted to the Court on jurisdictional briefs and portions of the record deemed necessary to reflect jurisdiction under Fla. R. App. P. 9.120, and it appearing to the Court that it is without jurisdiction, it is ordered that certiorari is denied.

No Motion for Rehearing will be entertained by the Court. See Fla. R. App. P. 9.330(d). ADKINS, Acting C.J., BOYD, OVERTON, SUNDBERG and ALDERMAN, JJ., concur

A True Copy
TEST:

Sid J. White
Clerk Supreme Court.

By: Debbie Causseaux
Deputy Clerk

TC
cc: Hon. Louis J. Spallone,
Clerk
Hon. John Gale, Judge
Hon. Richard P. Brinker,
Clerk

Harold D. Smith,
Esquire
Jay M. Levy, Esquire